

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X
UNITED STATES OF AMERICA, : 18-CR-408 (BMC)
Plaintiff, :
-against- : United States Courthouse
SHENG MIAO XIA, : Brooklyn, New York
also known as "Ah Miao," :
Defendant. : Thursday, November 5, 2020
- - - - -X : 1:30 p.m.

TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
BEFORE THE HONORABLE BRIAN M. COGAN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Government: SETH D. DuCHARME, ESQ.
Acting United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201
BY: WILLIAM CAMPOS, ESQ.
Assistant United States Attorney

For the Defendant: MICHAEL A. SHEINBERG, ESQ.
50 Court Street
Suite 702
Brooklyn, New York 11201

Court Reporter: DAVID R. ROY, RPR
225 Cadman Plaza East
Brooklyn, New York 11201
drroyofcr@gmail.com

Proceedings recorded by Stenographic machine shorthand,
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1 (In open court.)

2 (The interpreter previously sworn.)

3 THE COURTROOM DEPUTY: The United States versus
4 Sheng Xia, Docket Number 18-CR-408.

5 Counsel, please state your appearances, starting
6 with the Government.

7 MR. CAMPOS: William Campos for the United States.
8 Good afternoon, Your Honor.

9 THE COURT: Good afternoon.

10 MS. MALKO: Michelle Malko from Probation. Good
11 afternoon.

12 THE COURT: Good afternoon.

13 MR. SHEINBERG: Michael Sheinberg for Mr. Xia.
14 Good afternoon.

15 THE COURT: Good afternoon.

16 And good afternoon, Mr. Xia.

17 DEFENDANT XIA: Good afternoon, Your Honor.

18 THE COURT: It's Xia, right?

19 DEFENDANT XIA: Right.

20 THE INTERPRETER: Shaou (phonetic).

21 THE COURT: Okay. Thank you.

22 THE INTERPRETER: Also present is the interpreter,
23 Stephanie Liu.

24 THE COURT: I am going to -- because I know that
25 Mr. Sheinberg and Mr. Xia were present during the sentencing

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1 of his wife that immediately preceded this sentencing, I am
2 going to incorporate the transcript from that proceeding
3 into this one, just so that I do not have to, you know,
4 repeat things.

5 Obviously, Mr. Sheinberg, if you have any comments
6 on anything that I said before, you will let me know. But I
7 think it will be easier than going through the same exact
8 thing in a lot of respects, not identical, but a substantial
9 overlap again.

10 All right. So let me start, though, by noting
11 that we have the PSR of April 20th.

12 I have the memorandum I referred to previously
13 from Probation talking about the child-care issues. I also
14 have the revised sentencing recommendation, which I have
15 shown to Mr. Sheinberg and Mr. Xia.

16 I have the Government's sentencing memorandum of
17 October 23rd, and I have Mr. Sheinberg sentencing memorandum
18 with exhibits in that of October 15th.

19 All right. Is there anything else that I should
20 be reading?

21 MR. CAMPOS: There is nothing else from the
22 Government.

23 MR. SHEINBERG: And nothing else from us either,
24 Judge.

25 THE COURT: Okay.

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1 All right. Mr. Xia, are you familiar with those
2 documents?

3 DEFENDANT XIA: Yes.

4 THE COURT: Okay.

5 DEFENDANT XIA: Yes, I am, Your Honor.

6 THE COURT: With regard to the facts, again, I
7 think there is no dispute factually about the description of
8 the offense or the offender characteristics that are
9 described in the PSR. So unless I hear otherwise, I will
10 adopt those descriptions from Section A and Section C of the
11 PSR as my findings of fact for purposes of this sentencing
12 today.

13 Is that okay with the parties?

14 MR. CAMPOS: That's fine with the Government,
15 Your Honor.

16 MR. SHEINBERG: Yes, Judge.

17 THE COURT: All right. And then once again, we
18 will have the same issue that we discussed during Ms. Gao's
19 sentencing about the guidelines that you point to
20 importation enhancement, which I am inclined not to apply
21 for the reasons that I discussed during Ms. Gao's
22 sentencing.

23 So where does that leave us, again, Mr. Campos, in
24 terms of the guideline range?

25 MR. CAMPOS: Your Honor, that leaves us with a

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1 Level 19, a total level of 19, and that includes the
2 adjustment for acceptance of responsibility; with a criminal
3 history category of 1 for this defendant; and the guideline
4 range of imprisonment is 30 to 37 months.

5 THE COURT: All right.

6 Okay. Mr. Sheinberg, does that sound right to
7 you?

8 MR. SHEINBERG: We agree with that as well, yes,
9 Judge.

10 THE COURT: All right. That is my finding on the
11 guideline range.

12 Let me hear, then, from the parties on the
13 application of the sentencing factors.

14 I will start with you, Mr. Sheinberg.

15 MR. SHEINBERG: Yes, Your Honor. I appreciate the
16 opportunity.

17 As you said --

18 THE COURT: Well, let me say just one thing at the
19 outset: You know, one of the reasons that I gave a lighter
20 sentence to Ms. Gao is because she has got a very serious
21 medical condition. And I will tell you at the outset so you
22 should address this, that had she not had this condition, I
23 would have given her more, and that inclines me to give your
24 client more as a result of that. But I just wanted you to
25 know that that is kind of for me the starting point as to

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1 where we go from there.

2 MR. SHEINBERG: To that point, I was thinking
3 about that because, obviously, her situation is different
4 medically than my client's; although my client does have a
5 medical condition. He has diabetes as noted in his
6 probation report and he is on medication.

7 You know, they're husband and wife. So the wife's
8 ailments naturally follow to the husband, so his
9 responsibilities are to his wife and his family. But as the
10 wife is going through her treatment for cancer, or whatever
11 the situation she is going to find for herself in in the
12 future, he is 100 percent part and parcel to that. So I
13 know she is the one with the disease, she is the one with
14 the health issue, but that issue relates directly to my
15 client.

16 THE COURT: Point taken.

17 MR. SHEINBERG: Yeah. So, you know, it's very
18 hard to separate them in that respect.

19 THE COURT: Right.

20 MR. SHEINBERG: I'm not going to say that my
21 client has any serious ailment of that nature, but I
22 think -- as I said before, I think they're one in the same.
23 As within this whole case, I think that this case is them
24 together. And a lot of what Ms. Van Malden said prior, I'm
25 going to adopt them, as the Court has already adopted them

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1 in the minutes. I think she was right on on a lot on what
2 she said. I don't want to belabor that with the Court and
3 go over that again from hers.

4 But I think specifically, I wanted to address the
5 living situation because I know the Court was concerned
6 about that. I live in that area, as well, and I know a lot
7 of these Asian families live with an extended family. They
8 take care of each other. So in order to afford more of the
9 luxuries, I think it's more of a joint effort.

10 THE COURT: All right.

11 MR. SHEINBERG: You know, the Court was concerned
12 about the lifestyle, and that is my experience living in
13 that area.

14 THE COURT: You are saying joint beyond the
15 husband and wife --

16 MR. SHEINBERG: Right.

17 THE COURT: -- meaning other members of the
18 family?

19 MR. SHEINBERG: Other members of the family,
20 correct. I think that's how the whole community lives.

21 THE COURT: Right.

22 MR. SHEINBERG: And they're able to come out to
23 the suburban areas and prosper a little bit more than they
24 would have if they would have stayed within the certain city
25 limits.

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1 THE COURT: Right. The whole is greater than the
2 sum of the parts.

3 MR. SHEINBERG: Yeah, it really is.

4 So other than what has been said in regards to
5 these defendants' roles, specifically my client's role in
6 the whole thing, I know you sentenced the wife to six
7 months. I was going to ask for my client to have,
8 obviously, no jail time based upon the totality of the
9 circumstances that they face. You know, obviously, I will
10 leave that up to Your Honor to see this through. I would
11 ask that Your Honor consider, obviously, the co-defendants,
12 you know, not here, but other defendants that have already
13 been sentenced in this case to where they fell out.

14 Yes, Judge, listen, they are not -- they are
15 liable for what they've done. They understand that.
16 They've shown remorse. It's difficult to relay in a speech
17 to the Court how much remorse there really is. It's been
18 said in the letters. It has been shown by their actions
19 that they haven't repeated anything in this whole period of
20 time that this case has been going on. They're scared.
21 They're scared because of their health. They're scared
22 because of their children. They're scared because of their
23 family. A lot of that should be taken into consideration
24 when talking about rehabilitation of an individual. There's
25 a lot of what we're doing here we want them to be

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1 rehabilitated. We don't want them to reoffend. And the
2 Court is taking that into consideration as well when trying
3 to determine what sentence the community would ask for in
4 this situation, plus the fact that what the Court is going
5 to consider in mitigation.

6 I believe these individuals, the wife and the
7 husband realize, understand the damage that has already been
8 caused to their family. They have two little kids, the
9 mother, the sister, and whoever else is in the family. The
10 shame that they have brought to them, they understand that.
11 And I think it hits home. It hits home, and it's already
12 hit home. I don't think they are going to reoffend after
13 this. I think their children -- their children's lives,
14 they see it more important than anything that they could
15 have monetarily gained from this whole venture, which we're
16 talking about 90,000 each. You know, I know Ms. Van Malden
17 said that over a four-year period, it's 22,000-and-some-odd
18 dollars a year. It may be a lot but not a lot. To raise a
19 family, you know, it sounds like a lot, but it's -- I'm not
20 going to minimize it, but it's not what other people have
21 made.

22 Therefore, I am going to -- at this point, I will
23 leave it up to the Court. I know the Court has heard
24 everything. I would urge the Court to consider a nonjail
25 sentence for my client. I understand you may have other

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1 issues and you may have other ways of thinking about it, but
2 I would ask that you consider a nonjail sentence, or
3 something not more than the wife had received.

4 THE COURT: All right. Thank you, Mr. Sheinberg.

5 MR. SHEINBERG: Thank you, Judge.

6 THE COURT: Mr. Xia, is there anything that you
7 would like to say? I have read the letters that were
8 submitted for you, but I am happy to hear from you if there
9 is anything else that you would like to say.

10 DEFENDANT XIA: Hello, Your Honor.

11 Firstly, I want to apologize for what I have done
12 in this case and the mistakes that I have made. I know that
13 just by saying I'm sorry for the case for this crime that
14 I've done is not sufficient, it's not enough. So I want
15 to -- I would like to request Your Honor to consider the
16 fact that I still have parents that are aging parents who
17 still need my help and support. I also have two children.
18 One is four years old, one is 12 years old. I have two
19 children, four years old and 12 years old who need my
20 support. Also my wife's health is not good. Within three
21 years, she has had three operations already because of her
22 cancer condition. I'm requesting Your Honor to consider
23 this situation, and then would not send both parents to jail
24 so that my children will be without any parents with them at
25 the same time. I hope that Your Honor will give my family a

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1 fighting chance.

2 I know that Your Honor has already sentenced my
3 wife to six months in jail. Is it possible that I go to
4 jail for her and then do not send her to jail, and I would
5 rather be the one sent to jail, not her? So, of course, I
6 would hope that, you know, you would not sentence either one
7 of us to jail. But if you have to... So in my family I
8 have two senior parents and two young children, and my wife
9 being sick, being ill with a health condition and my family
10 needs us two right now.

11 So I know that you have said that we are living
12 well in a big house. In the beginning we actually just
13 rented this house. Okay. In the past --

14 THE INTERPRETER: I'm sorry. Correction.

15 DEFENDANT XIA: In the past, I rented a place on
16 189th Street in Queens and on second floor until last year
17 in May, until May last year we rented that place.

18 MR. SHEINBERG: May I have a moment, Judge?

19 DEFENDANT XIA: Because of -- because of my
20 family, I could not make any more money --

21 MR. SHEINBERG: Just a moment.

22 (Pause in proceeding.)

23 DEFENDANT XIA: Thank you very much. That's it,
24 Your Honor.

25 THE COURT: All right. Thank you, Mr. Xia.

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1 All right. Mr. Campos, I will hear from the
2 Government.

3 MR. CAMPOS: Your Honor, the Government has put
4 its reasons in its letter. I have nothing to add from the
5 comments I made in the co-defendant spouse's sentencing that
6 the Court has incorporated into this sentencing, and I would
7 leave it at that.

8 THE COURT: Okay.

9 All right. I have considered all of the
10 sentencing factors, including the guidelines. I thought
11 Mr. Xia's offer to go to jail on behalf of his wife so she
12 did not have to go was very heartfelt.

13 Mr. Xia, that's something that I cannot do.

14 (Pause in proceedings.)

15 THE COURT: He's not hearing, so let's correct
16 that.

17 (Pause in proceedings.)

18 THE COURT: Obviously, the main factors in
19 mitigation for both Mr. Xia and Ms. Gao are their children,
20 the parents, and their financial situation, and, of course,
21 their health situation. As I said to Mr. Sheinberg at the
22 beginning, obviously Ms. Gao's health condition is of more
23 concern because she has recurring cancer in a way that can
24 be very serious. But I recognize, as Mr. Xia said to me,
25 part of that falls on him, and that's certainly true,

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1 especially with two young children.

2 I am also concerned about the fact that, you know,
3 when we are talking about non-guideline sentences, and I am
4 talking about non-guidelines sentences here because I think
5 the guidelines are just too high, exposure of vulnerable
6 people, whether it's Ms. Gao or Mr. Xia, to the prison
7 population, while I know the prisons are doing everything
8 they can to minimize the risk of contagions to COVID, the
9 risk is probably higher in prison for someone with
10 conditions like either Mr. Xia or Ms. Gao have. But I
11 cannot, as I could not with Ms. Gao, I cannot get away from
12 the fact that, yes, if you divide the \$90,000 out over four
13 years, it doesn't seem like all that much. But it is
14 \$90,000, which is more, I think, than any of the other
15 defendants that I have sentenced have realized in this case.
16 And it is not a trivial or side amount. I do not think
17 there is any dispute about what Mr. Campos said, which is
18 this was, if not their only business, it was certainly a
19 major part of it.

20 I think there is as usual, no-perfect way to
21 accommodate all of these concerns, but the best I can do is
22 sentence Mr. Xia to one year and one day in custody. I want
23 him to understand that that extra one day means that he is
24 eligible for good-time credit which will give him 15 percent
25 off that sentence if he behaves well in custody, which I

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1 have every reason to expect that he will.

2 I am going to, again, be flexible on the surrender
3 date so that there is some ability to both have child and
4 parental care for a while, at least; and also protect the
5 two defendants from the added risk of contagion as a result
6 of being in an enclosed population with their pre-existing
7 conditions.

8 So unless, Mr. Campos, you object, what I am
9 thinking of doing is having Mr. Xia take a reporting date of
10 May 1st, and then let's see what is happening with the
11 family and kids at that point. I might extend that further
12 at the time if there are compelling reasons to. But I
13 think, hopefully, the pandemic concern will be somewhat
14 ameliorated by the time we get out there. So that will at
15 least take care of that. And who knows, the children will
16 be a little older, the parents will be a little older, and
17 it might work out better.

18 Do you have any problem with May 1st?

19 MR. CAMPOS: I have no objection to that,
20 Your Honor.

21 Just in terms of mechanics, are you saying that
22 you would want to put May 1st as a surrender date, or are
23 you suggesting that May 1st would be some sort of control
24 date or --

25 THE COURT: No. I am listing it as a surrender

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1 date, but I am indicating to Mr. Sheinberg that if I get a
2 request a couple of weeks in advance that show compelling
3 circumstances for a further extension, and, of course, I
4 hear from you at that time, then I might extend it further.
5 I don't know. That is just kind of like the dictum, not
6 part of the judgment that I am going to enter.

7 MR. CAMPOS: No objection, Your Honor.

8 THE COURT: Okay.

9 All right. And then what that will do, based on
10 the way that I sentenced Ms. Gao, is let's say it is May 1st
11 and let's say he does with good-time credit about nine and a
12 half months, they then have 60 days together to arrange
13 their family circumstances; and then Ms. Gao, who hopefully
14 will be through and recovered from her cancer treatment by
15 at that point, will be able to shoulder more than she could
16 shoulder right now. So that is my plan. You know, man
17 plans, God laughs. But I think that is the best I can do to
18 try to accommodate all of these concerns.

19 So it is a year and a day, restitution in the
20 amount of 275,000 jointly and severally. Again, that is due
21 immediately and payable at \$25 a quarter while in custody,
22 and 10 percent of gross monthly income while on supervised
23 release; order of forfeiture, one year of supervised
24 release, which will include terms of compliance with
25 restitution order; and the same full financial disclosure

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1 and cooperation and account prohibition without Probation's
2 consent condition that I read during Ms. Gao's sentence.

3 I assume, Mr. Sheinberg, you waive my reading
4 verbatim that again?

5 MR. SHEINBERG: I do.

6 THE COURT: Okay.

7 MR. SHEINBERG: I did go over that with him
8 earlier.

9 THE COURT: Okay.

10 MR. SHEINBERG: So he understands.

11 THE COURT: All right. I will not impose a fine
12 because he cannot afford it. I will impose the mandatory
13 \$100 special assessment.

14 Open counts, again?

15 MR. CAMPOS: And with the open counts, Judge,
16 the Government moves to dismiss the open counts.

17 And I believe there is an underlying indictment
18 that we move to dismiss.

19 THE COURT: All right. That motion is granted.

20 Mr. Xia, you have waived your right to appeal your
21 conviction and sentence by pleading guilty and entering into
22 your plea agreement. But if you want to appeal your
23 conviction, if you want to try on some theory that it was,
24 for example, fundamentally unfair, you would need to get
25 filed what is called a Notice of Appeal within 14 days.

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1 That is a one-page piece of paper filed with the Clerk of
2 this Court that simply says you intend to appeal.
3 Mr. Sheinberg will file that for you if you ask him to. You
4 can certify to the Clerk that you cannot afford a lawyer,
5 and then the Clerk will file it for you. Or you can get a
6 copy of the form yourself. It is only one page long and
7 file it. But no matter how you delegate it, it remains your
8 responsibility to see to it that it gets filed within 14
9 days; otherwise, you will have irrevocably waived any right
10 to appeal you might have.

11 All right. Is there anything further?

12 MR. CAMPOS: No, not from the Government,
13 Your Honor.

14 MR. SHEINBERG: No, Your Honor.

15 (Pause in proceedings.)

16 THE COURT: I am going to change the reporting
17 date to May 3rd because May 1st is a Saturday. All right.
18 So that is the initial reporting date and we will see if
19 that changes.

20 All right. And I think Mr. Xia may have some
21 questions. I am going to wait here while he confers with
22 the interpreter and Mr. Sheinberg to see if he does have any
23 questions.

24 (Pause in proceedings.)

25 THE COURT: All right. Is there anything else,

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1 Mr. Sheinberg?

2 MR. SHEINBERG: No, Judge.

3 THE COURT: All right.

4 MR. SHEINBERG: We're good.

5 THE COURT: All right.

6 MR. CAMPOS: Thank you, Your Honor.

7 MR. SHEINBERG: Thank you, Your Honor.

8 THE COURT: All right. Thank you very much. We
9 are adjourned.

10 (Matter concluded.)

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12 --oo0oo--

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17 *I (we) certify that the foregoing is a correct transcript*
18 *from the record of proceedings in the above-entitled matter.*

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19 /s/ David R. Roy
DAVID R. ROY

January 7, 2021
Date

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